IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 142 OF 2007
WITH
CIVIL APPLICATION NO. 513 OF 2007
IN
S.A. NO. 142 / 2007

Manohar Maruti Mali (Linge) .. Appellant.

V/s.

1.Sou.Mangala Rameshchandra Kulkarni & others. .. Respondents.

Mr. Rahul S. Kate for the Appellant.

CORAM : S. A. BOBDE, J.

DATED : 23rd AUGUST, 2007.

P.C. :-

. The only question raised by the learned counsel for the Appellant is to the legality and propriety of the decree of the appellate court in directing the refund of earnest money to the respondent plaintiff.

2. The respondent filed a suit for specific performance of the contract. The courts below have declined the specific performance. However, the appellate court has granted direction to refund the earnest money paid by the respondent to the appellant.

Mr. Kate, the learned counsel for the appellant submitted that there was no evidence of the respondent having paid earnest money to the appellant. However, the learned counsel fairly accepted the fact that there was oral evidence to that effect. He, however, submitted that the oral evidence is contrary to the recitals in Exh. 72 where it is stated that the amount of earnest money is paid by a cheque. Undoubtedly, there is this discrepancy. However, the appellate court was competent to nonetheless record a finding that the amount was paid by cash to the appellant by believing the oral evidence. This issue has been decided by applying standard of proof of balance of probabilities, which is the correct standard for a decision in a civil cases.

3. No substantial question of law arises in the second appeal, which is hereby dismissed. The Civil Application does not survive.

(S.A.BOBDE,J.)

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